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4 JACOBI GAINES,

5 Plaintiff,

6 v.

7 K. DE LA FUENTE,

8 Defendant.

9 Case No. [23-cv-05386-RMI](#)

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11 **ORDER GRANTING MOTION TO
STAY PROCEEDINGS AND
ADMINISTRATIVELY CLOSE THE
CASE**

12 Re: Dkt. No. 24

13 Plaintiff, a detainee, filed a *pro se* civil rights complaint under 42 U.S.C. § 1983. The
14 Court ordered service regarding Plaintiff's claim that Defendant assaulted him at the county jail.
15 Defendant was served and filed an answer. Defendant has now filed a motion to stay the case
16 because Plaintiff is facing criminal charges in Alameda County regarding the incident. (dkt. 24).
17 Plaintiff did not file an opposition despite being provided a reminder by the Court. (dkt. 27).

18 **BACKGROUND**

19 There was an encounter between Plaintiff and Defendant on February 9, 2021. (dkt. 1 at 3).
20 Plaintiff alleges that Defendant approached him, grabbed his arm and slammed him into a table.
21 (*id.* at 3). Defendant then punched Plaintiff several times about his face and forehead and used his
22 knee to strike Plaintiff's stomach. Defendant then kicked Plaintiff in the stomach. Plaintiff seeks
23 money damages. (*id.*).

24 Defendant states that he suffered significant injuries from Plaintiff's actions during the
25 encounter. (dkt. 24-1 at 1). On December 28, 2021, the Alameda County District Attorney's
26 Office filed criminal charges against Plaintiff regarding the incident with Defendant, including a
27 felony charge of willfully resisting a peace that proximately causes death or serious bodily injury
28 to a peace officer in violation of California Penal Code section 148.10 (a). (dkt. 24-1 at 1; Ex. B).

1 The criminal charges against Plaintiff are pending and the most recent hearing was on October 24,
2 2024. (*id.*; *People v. Gaines*, Case No. 21-CR-015405 (Alameda County)).

3 DISCUSSION

4 In order to recover damages for an allegedly unconstitutional conviction or imprisonment,
5 or for other harm caused by actions whose unlawfulness would render a conviction or sentence
6 invalid, a 42 U.S.C. § 1983 plaintiff must prove that the conviction or sentence has been reversed
7 on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to
8 make such determination, or called into question by a federal court's issuance of a writ of habeas
9 corpus. *Heck v. Humphrey*, 512 U.S. 477, 486-487 (1994). A claim for damages bearing that
10 relationship to a conviction or sentence that has not been so invalidated is not cognizable under
11 § 1983. *Id.* at 487.

12 A conviction for resisting arrest may bar claims under Section 1983 for excessive force
13 during the course of an arrest because under California law, the resisting arrest conviction may be
14 lawfully obtained only if the officers do not use excessive force in the course of making that arrest.
15 See *Smith v. City of Hemet*, 394 F.3d 689, 695-96 (9th Cir. 2005) (en banc) (citing *People v.*
16 *Olguin*, 119 Cal.App.3d 39, 45-46 (1981)). The plaintiff's conviction in *Smith* was for resisting a
17 "peace officer" under California Penal Code Section 148(a). See *id.* at 695.

18 Defendant argues that Plaintiff's felony criminal charges of resisting a peace officer
19 involve the same facts as his Section 1983 claim. A conviction in Plaintiff's criminal case could
20 bar Plaintiff from proceeding in this civil rights case. Defendant seeks to stay this case until the
21 criminal case is resolved. Plaintiff has not filed an opposition to the motion to stay or responded to
22 the Court's order to file an opposition.

23 Here, Plaintiff does not oppose staying the case and Defendant's arguments are well taken.
24 The criminal case and this Section 1983 case involve the same underlying facts and the results of
25 Plaintiff's criminal case may directly affect this case.

26 Furthermore, in a different context, in *Wallace v. Kato*, 549 U.S. 384, 393 (2007), the
27 Court held that the "*Heck* rule for deferred accrual [of the statute of limitations] is called into play
28 only when there exists 'a conviction or sentence that has not been . . . invalidated,' that is to say,

1 an ‘outstanding criminal judgment.’” *Id.* at 391-93 (quoting *Heck*, 512 U.S. at 486-87). The *Heck*
2 rule delays accrual of the limitations period only if there is an existing conviction on the date the
3 statute of limitations begins to run, which in the case of wrongful arrest or wrongful imprisonment
4 claims is when the plaintiff’s confinement is no longer without legal process, but rather becomes a
5 confinement pursuant to legal process, for example, when he or she is bound over by a judge or
6 arraigned on charges. *Id.* at 389-90. Although the Court was only considering when the statute of
7 limitations began running on a false arrest or false imprisonment claim, the discussion quoted
8 suggests that *Heck* does not apply if there is no extant conviction – for instance, if a plaintiff has
9 only been arrested or charged.

10 If a plaintiff files a Section 1983 claim before he is convicted, or files any other claim
11 related to rulings that likely will be made in a pending or anticipated criminal trial, it is within the
12 power of the district court, and accords with common practice, to stay the civil action until the
13 criminal case or the likelihood of a criminal case is ended. *Id.* at 393-94. If the plaintiff is
14 thereafter convicted, and if the stayed civil suit would impugn that conviction, *Heck* requires
15 dismissal; otherwise, the case may proceed. *Id.* at 394. For all of these reasons, this case should be
16 stayed.

17 CONCLUSION

18 Defendant’s motion to stay the case (dkt. 24) is **GRANTED** and this case is **STAYED**.
19 Plaintiff must inform the Court, by way of a motion to reopen, that the criminal charges have been
20 dismissed or have resulted in a conviction. Any motion to reopen must have the words MOTION
21 TO REOPEN written on the first page.

22 The Clerk shall **ADMINISTRATIVELY CLOSE** this case. The closure has no legal
23 effect; it is purely a statistical matter. The case will be reopened, and the stay vacated upon
24 notification by Plaintiff in accordance with the instructions above.

25 It is Plaintiff’s responsibility to prosecute this case. Plaintiff must keep the Court informed
26 of any change of address by filing a separate paper with the Clerk headed “Notice of Change of
27 Address.” He also must comply with the Court’s orders in a timely fashion. Failure to do so may
28 result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil

1 Procedure 41(b).

2 **IT IS SO ORDERED.**

3 Dated: October 24, 2024

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ROBERT M. ILLMAN
United States Magistrate Judge